



**UNITED STATES DEPARTMENT OF COMMERCE**  
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APPLICATION NO. 020277	FILING DATE 07/07/99	FIRST NAMED INVENTOR KAYAGAKI	N	ATTORNEY DOCKET NO.
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020277  
MCDERMOTT WILL & EMERY  
600 13TH STREET NW  
WASHINGTON DC 20005-3096

HM11/0707

TUNG, M EXAMINER

ART UNIT

PAPER NUMBER

07/07/99

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**Advisory Action**Application No.  
**08/913,555**

Applicant(s)

**Kayagaki, et al.**

Examiner

**Mary Tung**

Group Art Unit

**1644**

## THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) ☒ expires 3 months from the mailing date of the final rejection.
- b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☐ Appellant's Brief is due two months from the date of the Notice of Appeal filed on \_\_\_\_\_ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Jun 27, 1999 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

- ☒ The proposed amendment(s):
- ☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.
  - ☒ will not be entered because:
    - ☒ they raise new issues that would require further consideration and/or search. (See note below).
    - ☐ they raise the issue of new matter. (See note below).
    - ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
    - ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: See below

- ☐ Applicant's response has overcome the following rejection(s):

- ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.

- ☒ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:

The declaration by Mr. Nakata has not been found persuasive for the same reasons discussed below.

- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: 51-53, 55-62, 73, and 154

Claims objected to: \_\_\_\_\_

Claims rejected: 54

- ☐ The proposed drawing correction filed on \_\_\_\_\_ ☐ has ☐ has not been approved by the Examiner.

- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

- ☒ Other *The response and declaration by Mr. Nakata, has been carefully considered, but are not found persuasive because the method taught by Hanabuchi on page 4931, cols. 1 and 2 disclose a method which also requires plasmids and vectors supplied by Dr. Brian Seed of Massachusetts General Hospital, and thus one of skill in the art would not be able to practice the claimed invention recited in claim 54.*

*David A. Saunders*  
DAVID SAUNDERS  
PRIMARY EXAMINER  
ART UNIT 1821644